

## Internal Revenue Service, Treasury

## § 301.6104(a)-1

notify the State tax agency in writing of the Service's preliminary determination and of the Service's intention to discontinue disclosure of Federal returns and return information to the State tax agency. Upon so notifying the State tax agency, the Service, if it determines that Federal tax administration would otherwise be seriously impaired, may suspend further disclosure of Federal returns and return information to the State tax agency pending a final determination by the Commissioner or Deputy Commissioner described in subparagraph (2) of paragraph (c) of this section.

(b) *State tax agency's right to appeal.* A State tax agency shall have 30 days from the date of receipt of a notice described in paragraph (a) of this section to appeal the preliminary determination described in paragraph (a) of this section. The appeal shall be made directly to the Commissioner.

(c) *Procedures for administrative review.* (1) To appeal a preliminary determination described in paragraph (a) of this section, the State agency shall send a written request for a conference to: Commissioner of Internal Revenue (Attention: C), 1111 Constitution Avenue, NW., Washington, D.C. 20224. The request must include a complete description of the State tax agency's present system of safeguarding Federal returns or return information received from the Service. The request must then state the reason or reasons that the State agency believes that such system, including improvements, if any, to such system expected to be made in the near future, is or will be adequate to safeguard Federal returns or return information received from the Service.

(2) Within 45 days of the receipt of a request made in accordance with the provisions of subparagraph (1) of this paragraph, the Commissioner or Deputy Commissioner will personally hold a conference with representatives of the State tax agency, after which the Commissioner or Deputy Commissioner will make a final determination with respect to the appeal.

(Secs. 6103(p)(7) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 26 U.S.C. 6103(p)(7); 68A Stat. 917; 26 U.S.C. 7805))

[T.D. 7693, 45 FR 26325, Apr. 18, 1980]

### § 301.6104(a)-1 Public inspection of material relating to tax-exempt organizations.

(a) *Application for tax exemption and supporting documents.* If the Internal Revenue Service determines that an organization described in section 501 (c) or (d) is exempt from taxation for any taxable year, the application for tax exemption upon which the determination is based, together with any supporting documents, is open to public inspection. Some applications for tax exemption have been destroyed and therefore are not available for inspection. For purposes of determining the availability for public inspection, a claim for tax exemption filed to reestablish exempt status after denial thereof under the provisions of section 503 or 504 (as in effect on December 31, 1969), or under the corresponding provisions of any prior revenue law, is considered an application for tax exemption.

(b) *Letters or documents issued by the Internal Revenue Service with respect to an application for tax exemption.* If an application for tax exemption is filed with the Internal Revenue Service after October 31, 1976, and is open to public inspection under paragraph (a) of this section, then any letter or document issued to the applicant by the Internal Revenue Service which relates to the application is also open to public inspection. For rules relating to when a letter or document is issued, see § 301.6110-2(h). Letters or documents to which this paragraph applies include, but are not limited to—

(1) Favorable rulings and determination letters (see § 601.201(n)(1)) issued in response to applications for tax exemption,

(2) Technical advice memoranda (see § 601.201(n)(9)) issued with respect to an approved, or subsequently approved, application for tax exemption, and

(3) Letters issued in response to an application for tax exemption that propose a finding that the organization is not entitled to be exempt from tax, if the organization is subsequently determined, on the basis of the application, to be exempt from tax.

(c) *Requirement of exempt status.* An application for tax exemption, supporting documents, and letters or documents issued by the Internal Revenue Service that relate to the application will not be open to public inspection before the organization filing the application is determined, on the basis of the application, to be exempt from taxation for any taxable year. On the other hand, if the organization is determined to be exempt for any taxable year, the material will not be withheld from public inspection on the ground that the organization is determined not to be exempt for any other taxable year.

(d) *Documents included in the term "application for tax exemption".* For purposes of this section—

(1) *Prescribed application form.* If a form is prescribed for an organization's application for tax exemption, the application for tax exemption includes the form and all documents and statements the Internal Revenue Service requires to be filed with the form.

(2) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes:

(i) The application letter and a copy of the articles of incorporation, declaration of trust, or other instrument of similar import that sets forth the permitted powers or activities of the organization,

(ii) The bylaws or other code of regulations,

(iii) The latest financial statement showing assets, liabilities, receipts and disbursements,

(iv) Statements showing the character of the organization, the purpose for which it was organized, and its actual activities,

(v) Statements showing sources of income and receipts and the disposition thereof, and whether or not any income or receipts is credited to surplus or may inure to the benefit of any private shareholder or individual, and

(vi) Any other statements or documents the Internal Revenue Service requires to be filed with the application letter.

(3) *Prohibited transactions.* An application for tax exemption does not include a request for a ruling as to whether a

proposed transaction is a prohibited transaction under section 503.

(e) *Supporting documents defined.* For purposes of this section, "supporting documents", as used with respect to an application for tax exemption, means any statement or document not described in paragraph (d) of this section that is submitted by an organization in support of its application. For example, a legal brief submitted in support of an application for tax exemption is a supporting document.

(f) *Statement of exempt status.* In addition to having the opportunity to inspect material relating to tax exempt organizations, a person may request a statement setting forth the following information:

(1) The subsection and paragraph of section 501 (or the corresponding provision of any prior revenue law) under which an organization has been determined, on the basis of an application open to public inspection, to qualify for exemption from taxation, and

(2) Whether the organization is currently held to be exempt.

The request for the statement must be made in the same manner as a request for inspection (see § 301.6104(a)-6).

(g) *Withholding of certain information from public inspection.* For rules relating to certain information contained in an application for tax exemption and related material which will be withheld from public inspection, see § 301.6104(a)-5(a).

(h) *Procedures for inspection.* For rules relating to procedures for public inspection of applications for tax exemption and related material, see § 301.6104(a)-6.

(i) *Material not open to public inspection under section 6104 or 6110.* Under section 6110 certain written determinations issued by the Internal Revenue Service are made available for public inspection. Section 6110 does not apply, however, to matters on which the determination of availability for public inspection is made under section 6104. Accordingly, § 301.6110-1(a) describes matters which, for purposes of section 6110, are considered within the ambit of section 6104. Some determination letters and other documents relating to tax exempt organizations that are not open to public inspection under section

6104(a)(1)(A) and this section are nevertheless within the ambit of section 6104 for purposes of section 6110. These determination letters and other documents are therefore not available for public inspection under either section 6104 or section 6110. They include but are not limited to—

(1) Unfavorable rulings or determination letters (see § 601.201(n)) issued in response to applications for tax exemption,

(2) Rulings or determination letters revoking or modifying a favorable determination letter (see § 601.201(n)(6)),

(3) Technical advice memoranda (see § 601.201(n)(9)) relating to a disapproved application for tax exemption or the revocation or modification of a favorable determination letter,

(4) Any letter or document filed with or issued by the Internal Revenue Service relating to whether a proposed or accomplished transaction is a prohibited transaction under section 503,

(5) Any letter or document filed with or issued by the Internal Revenue Service relating to an organization's status as an organization described in section 509 (a) or 4942(j)(3), unless the letter or document relates to the organization's application for tax exemption, and

(6) Any other letter or document filed with or issued by the Internal Revenue Service which, although it relates to an organization's tax exempt status as an organization described in section 501 (c) or (d), does not relate to that organization's application for tax exemption, within the meaning of paragraph (d).

(Secs. 6104(a)(1)(A), 6104(a)(1)(B), and 7805 of the Internal Revenue Code of 1954 (72 Stat. 1660, 88 Stat. 940, 68A Stat. 917; 26 U.S.C. 6104(a)(1)(A), 6104(a)(1)(B), 7805))

[T.D. 7845, 47 FR 50486, Nov. 8, 1982]

**§ 301.6104(a)-2 Public inspection of material relating to pension and other plans.**

(a) *Material open to inspection.* Except as provided in § 301.6104(a)-4 with respect to plans having fewer than 26 participants, an application for a determination letter which is filed with the Internal Revenue Service after September 2, 1974, together with supporting documents filed by the applicant in support of the application, will

be open to public inspection under section 6104(a)(1)(B) (i) and (ii). An application for a determination letter and supporting documents will be open to public inspection whether or not the application is withdrawn by the applicant, and whether or not the Internal Revenue Service determines that the plan, account, or annuity to which the application relates is qualified or that any related trust or custodial account is exempt from tax.

(b) *Documents included in the term "application for a determination letter"*—

(1) *Employees' plans and individual retirement plans.* For purposes of this section, the term "application for a determination letter" includes the documents that an applicant files with respect to a request that the Internal Revenue Service determine the qualification of—

(i) A pension, profit-sharing, or stock bonus plan under section 401(a),

(ii) An annuity plan under section 403(a),

(iii) A bond purchase plan under section 405(a), or

(iv) An individual retirement account or annuity described in section 408 (a), (b) or (c).

(2) *Tax exempt trusts or custodial accounts.* The term "application for a determination letter" also includes the documents an applicant files with respect to a request that the Internal Revenue Service determine the exemption from tax under section 501(a) of an organization forming part of a plan or account described in subparagraph (1) of this paragraph, or a custodial account described in section 401(f).

(3) *Master, prototype and pattern plans.* The term "application for a determination letter" also includes documents which an applicant files with respect to a request for approval of a master, prototype, pattern or other such plan or account.

(4) *Prescribed forms and application letters.* With respect to an application for a determination letter described in this paragraph (b) for which an application form is prescribed, the application for a determination letter includes the form and all documents and statements required to be filed in connection with the form. With respect to an application for a determination letter for